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IN THE

Supreme Court of the United States

PAYSOFF TINKOFF,
Plaintiff-Appellant,
vs.
NIGEL D. CAMPBELL, etc., et al.,
Defendants-Appellees.

No. 1263

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

PAYSOFF TINKOFF, *Pro Se.*
Plaintiff-Appellant.

PAYSOFF TINKOFF,
Ph. Hol. 5533.



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No. 1263

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

I.

Jurisdiction and OrdersAppealed From.

This is an appeal from an order of the United States Circuit Court of Appeals for the Seventh Circuit, entered on December 23, 1946, which affirmed the judgment of the Trial Court below, and also from the further order denying the Petition for Rehearing, entered on January 18, 1947.

II.

Grounds For Issuing The Petition For Certiorari.

The Petitioner alleges that the United States Circuit Court of Appeals for the Seventh Circuit failed to consider, and wholly ignored, the questions raised in the appeal, and that this Court in the exercise of its supervisory jurisdiction, should direct the United States Circuit Court of Appeals to decide the questions raised, briefed and argued before the said Court, same being in substance the following:

1. Whether the Secretary of the Treasury, under the Act of July 7, 1884 (5 U. S. C. A. 261), has the right to exclude an agent of a taxpayer in explaining to the Treasury Department the computations made in an income tax return by an accountant and layman authorized to prepare said returns for the Taxpayer under the Constitution of the United States?
2. Whether the word "Claimant" as used in the Act of July 7, 1884 (5 U. S. C. A. 261), should be given a reasonable construction, limiting the word "Claimant" to mean those who demand a refund of money from the United States, and not to all taxpayers who file income tax returns?
3. This specific question has never been presented to any Federal Court, and therefore no interpretation or construction has been given to the word "Claimant", as used in the Act of July 7, 1884 (5 U. S. C. A. 261).
4. Whether Plaintiff's right to liberty, property and pursuit happiness, as guaranteed by the Federal and State Constitutions, were violated in this proceeding, in that the

Petitioner's contracts with the Taxpayers for whom the returns were prepared, were interfered with by the Government, in that the Plaintiff was prevented from explaining the computations in such returns to the Government, pursuant to his contract with the Taxpayers?

5. The other questions raised before the Circuit Court of Appeals, brief and argued, but wholly ignored by the Court, were the following:

(a) Did the Trial Court err, as a matter of law, in denying Plaintiff's motion to strike the Defendant's answer to the amended complaint?

(b) Did the Trial Court err, as a matter of law, in granting the Defendants' motion to dismiss, made at the close of the Plaintiff's case?

(c) Did the Trial Court err, as a matter of law, in denying Plaintiff the right to have a pre-trial examination of various Defendants and other witnesses, said requests being supported by verified Petitions?

III.

Summary Statement of the Facts.

The Petitioner, Paysoff Tinkoff, as a layman and an accountant, prepared income tax returns in the years 1943 and 1944 for several hundred taxpayers. That the Petitioner's contracts provided that the adjustments and computations made by the Petitioner with the taxpayer would be explained to the Office of the Collector of Internal Revenue, or the Internal Revenue Agent in Charge, when examined.

That the Office of the Collector of Internal Revenue, when

examining taxpayer's returns, advised the said taxpayers that the Petitioner was disbarred by the Treasury Department, and was an unfit person to deal with, and that as a result thereof numerous contracts were breached by many taxpayers; and that the said Office of the Collector in Internal Revenue further refused to allow your Petitioner, for the taxpayers, who were willing to have Petitioner represent them as a layman and accountant, before the Office of the Collector of Internal Revenue, to appear before the said office and explain the adjustments and computations in said returns.

That an injunction was prayed for in the Petition, to restrain the Collector from causing Petitioner's contracts from being breached, and at the close of the Plaintiff's case the Court allowed the Defendants' motion to dismiss and denied the injunction, the Defendants contending that only licensed agents or attorneys of the Treasury Department could appear before the Office of the Collector of Internal Revenue, and that "Claimant" included Taxpayer.

IV.

POINTS AND AUTHORITIES.

(A) The word "Claimant", as used in the Act of July 7, 1884 (5 U. S. C. A. 261), means a person who has a right to demand money from the United States.

Hobbs v. McLean, 117 U. S. 567; 29 L. Ed. 543.

The Conqueror, 160 U. S. 110, 123.

Crane v. Commissioner, U. S. Sup. Ct. (Apr. 14, 1947).

(B) A Claimant does not include a Taxpayer. A Taxpayer means "any person subject to the Act imposed by this Title."

U. S. Internal Revenue Code, Sec. 3797(14).

(C) Claims for Refund are specifically provided for in Sec. 322 of the Internal Revenue Code, and the Commissioner of Internal Revenue has created a special Form, No. 873, entitled "Claim for Refund", for recovery of any overpayments by a Taxpayer.

U. S. Internal Revenue Code, Sec. 322.

(D) The right of a person to pursue a lawful occupation or calling is a property right.

People v. Steele, 231 Ill. 340, 346.

In Re:Opinion of Justices, 208 Mass. 619; 94 N. E. 1004.

Sheldon v. Frazer, 320 Ill. 253, 266.

(E) The liberty of contracting is both a liberty and a property right.

People v. Steele, 231 Ill. 340, 341.

(F) Appellant is entitled to have an Appellate Court decide the substantial points assigned as errors, and argued in the briefs of both Appellant and Appellees.

21 C. J. S. 406, Note 93.

4 C. J. S. 87.

(G) Income Tax Acts should be construed in their Ordinary meaning.

Crane v. Commissioner, U. S. Sup. Ct. (Apr. 14, 1947).

Old Colony R. R. Co. v. Commissioner, 284 U. S. 552, 52 S. Ct. Rep. 211, 213.

V.

ARGUMENT.

A.

A Claimant is a person who has a right to demand money from the United States.

The Act of July 7, 1884 (5 U. S. C. A. 261) uses the word "Claimant" at least six times, and it evidently was the intention of Congress that those persons who represented Claimants before the Treasury Department should be licensed by the Secretary of the Treasury.

The Supreme Court of the United States in the case of *Hobbs v. McLean*, 117 U. S. 567, says as follows:

"What is a claim against the United States is well understood. *It is a right to demand money from the United States.*" (Italics Supplied).

This case has been cited by this Court and other Courts, both State and Federal, as authority for the fact that a claim against the United States is a right to demand money from the United States.

The Internal Revenue Code under Sec. 3797(14), specifically states that a taxpayer is a person subject to a tax imposed by this title.

A taxpayer must file, under the Internal Revenue Code, not only income taxes, but also gift taxes, estate taxes, admissions tax, and all other specified taxes enumerated in the Internal Revenue Code, which total hundreds in number.

The present Income Tax requires at least 40 millions people to file returns as taxpayers, and no one can say that each taxpayer is a claimant against the United States. This is the point which the Collector maintained, and which was approved by the trial court and the Circuit Court of Appeals.

The Internal Revenue Code further provides, under Section 322, for certain documents to be filed in order to obtain a refund of any and all kind of taxes or import duties overpaid, and the Commissioner of Internal Revenue has specifically provided a special form entitled "Claim for Refund", No. 873.

It is, therefore, the Petitioner's contention that the Secretary of the Treasury has no power to license anyone to appear for any taxpayer who is not a claimant, and that a taxpayer, as a resident and citizen of the United States, has a right to employ any individual to prepare his return, and has the further right to have such individual preparing his return act as his agent in explaining the computations and adjustments made in said return, to the Collector of Internal Revenue, which has been denied in this case. Such action of the Court below was error.

The Supreme Court of the United States in the case of *The Conqueror*, 160 U. S. 110, on page 123 said, in defining the word "Claimant" as used in that case:

"The word claimant is obviously used in its technical sense, to stand for the owner of the property seized, for a penalty or forfeiture, under previous sections of the act."

B.

The petitioner, as a layman and accountant, has a right to engage in any lawful vocation, and to enjoy the benefits therefrom, and to make binding contracts incidental thereto, and the deprivation of such rights by the Collector of Internal Revenue violates the petitioner's rights to life, liberty, property and the pursuit of happiness.

This Court has held from time immemorial that every person of the United States is guaranteed under the fifth amendment to the Constitution, life, liberty, property and the pursuit of happiness, and the enjoyment thereof, and is not to be deprived of the same without due process of law.

The Petitioner contends that as a layman contracts were made with numerous taxpayers, which provided that the computations and adjustments in the taxpayers' returns prepared by the Petitioner should be fully explained to the Collector's Office, when the same are audited, and this right was deprived of Petitioner by the Office of the Collector when the said returns were audited, on the ground that the Petitioner was not licensed by the Secretary of the Treasury, and that as a result thereof numerous taxpayers breached their contracts with the Petitioner, and others refused to return to Petitioner to assist them in any manner whatsoever.

This action by the Collector was a violation of the Petitioner's constitutional rights, guaranteed under Article V, aforementioned.

The Supreme Court of Massachusetts in *In Re Opinions of Justices*, 208 Mass. 619, 94 N. E. 1044, said:

"The right of acquiring, possessing, and protecting property, and of enjoying life, liberty or property, se-

cured by the State and Federal Constitutions, includes the right to use one's powers and faculties in any reasonable way for the promotion of his interests, and the right to make contracts with others; and such rights can be regulated by the legislature, in the exercise of the police power, only in the interest of the public health, safety or morals, and in a restricted sense in the interest of the public welfare."

The Supreme Court of Illinois, in the case of *People v. Steele*, 231 Ill. 340, 346, said:

"Liberty, in the constitutional sense, means, not only freedom from servitude and restraint, but embraces the right of every man to be free in the use of his faculties, and to adopt such a vocation as he may choose, subject only to the restraint necessary to secure the common welfare; and the right of every man to choose his own occupation is intended in the constitutional right to the pursuit of happiness."

and also on page 345, the Court said:

"The right of every man to choose his own occupation, profession or employment, though not expressly guaranteed by the constitutions, is included in the right to the pursuit of happiness. * * * The privilege of contracting is both a liberty and a property right and is protected by the constitution."

The Supreme Court of Illinois in the case of *Frazier v. Shelton*, 320 Ill. 253, in holding that the practice of accounting is a private business not affected with a public interest, that the interference of such practice is a violation of the constitutional rights not only of liberty and property, but also the pursuit of happiness, on page 266 said as follows:

"The right to follow any of the common occupations of life is an inalienable right. That right is one of the blessings of liberty, and is accorded as a privilege to the citizens of the United States by the preamble to the Federal Constitution, and by the Declaration of

Independence, under the language 'pursuit of happiness.' The right of a citizen to pursue ordinary trades or callings upon equal terms with all other persons similarly situated is a part of his right to liberty and property. * * * Liberty as used in the constitution, embraces the free use by all citizens of their powers and faculties, subject only to the restraints necessary to secure the common welfare. The right to contract is both a liberty and a property right. * * * It is, of course, well established that the right to liberty, property and the pursuit of happiness is subject to the reasonable exercise of the police powers of the States."

The Petitioner therefore contends that his constitutional rights to life, liberty, property and the pursuit of happiness, and also the right and liberty of contracting, have been violated by the Collector's Office in denying your Petitioner the right to perform and execute his contracts with the taxpayers, in explaining the computations and adjustments on the taxpayer's returns, which were prepared by the Petitioner for the taxpayers, when the said tax returns were being audited and examined by the Collector's Office.

C.

The petitioner was entitled to have the substantial questions raised on his appeal, relating to the merits of the case, decided by the Circuit Court of Appeals, and as the Circuit Court of Appeals wholly ignored these substantial questions on the appeal, this court has the supervisory power to remand the case for decision of the substantial questions presented.

A reading of the Opinion of the Circuit Court of Appeals shows that said Court wholly ignored the substantial questions raised by your Petitioner on appeal, relating to the merits of the appeal, to-wit, (1) whether error was com-

mitted in ruling, as a matter of law, that a taxpayer was a Claimant; (2) in allowing the Defendants' motion to dismiss at the close of the Plaintiff's case, on uncontradicted testimony; (3) in denying the Petitioner a right to a pre-trial examination.

These questions were specifically presented to the Court by assignments of error, and argued in the briefs of both Appellant and Appellees thoroughly, and were wholly ignored by the Circuit Court of Appeals.

As the Statute allows appeals to the Circuit Court of Appeals, these questions submitted to the Court should be decided by the Court, and failure so to do constitutes prejudicial error to your Petitioner (21 C. J. S. 406; 4 C. J. S. 587).

D.

Conclusion.

The Petitioner respectfully submits that this question as to taxpayers having agents not licensed to practice before the Treasury Department, who have prepared the Taxpayers' returns, appear before the Collector's Office, or its other branches of the Treasury Department, to explain the computations or adjustments in the returns prepared by such agent, is guaranteed by the Fifth Amendment of the Constitution of the United States; and that the power given to the Secretary of the Treasury is to license attorneys and agents regarding "Claimants" under the Act, and no others. The Secretary of the Treasury has no power to adopt any rules regarding admissions of agents of taxpayers, who are not claimants.

As shown above, a taxpayer is separate and distinct from a claimant. The law imposes obligations and penalties upon all taxpayers, but not upon all claimants, and although all claimants must be taxpayers, yet not all taxpayers are claimants.

The question presented by your Petitioner relating to Taxpayer's representation by an agent without a license will, in fact, affect practically forty million Taxpayers, and the present construction of the Act by the Secretary of the Treasury is that only licensed attorneys, and agents, can appear for Taxpayers, and no one else—not even an attorney, a certified public accountant, any Judge of this Court, or State or Federal Court,—could appear before the Treasury Department or its branches, unless he had received a license from the Treasury Department. Such a construction is far beyond the intention of the Congress when this Act was passed limiting representation to Claimants only.

It therefore follows that the Secretary of the Treasury has no power to enact any Rule or Regulation relating to representation before the Department, of a taxpayer who is not a "Claimant"; and therefore a taxpayer has the right to appear before the Treasury Department to explain any items in his return, by his representative, without obtaining a license from the Secretary of the Treasury.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that justice may be done, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals, and finally reverse it.

PAYSOFF TINKOFF,
Petitioner, Pro Se.

E.

ADDENDA.

Income Tax Acts should be construed in their Ordinary Meaning.

This Court in the case of *Crane v. Commissioner* promulgated April 14, 1947 (1947 Prentice Hall page 72009), held that the word "property" as used in Section 111(b), and 113(b) should be given its "ordinary" meaning, when it said in part:—

(pg. 72011)

"In the first place, the words of statutes—*including the revenue acts*—should be interpreted where possible in their ordinary, everyday senses" (Italics supplied.)

(pg. 72013)

"Quite obviously, the word 'property' used here with reference to a sale, must mean 'property' in the same *ordinary* sense intended by the use of the word with reference to acquisition and depreciation in sec. 113 . . ."

In *Old Colony Railroad Co. v. Commissioner*, 284 U. S. 552, 52 S. Ct. Rep. 211, on pg. 213 this Court said:

"The legislature must be presumed to use words in their known or ordinary signification * * * The popular or received import of words furnishes the general rule for the interpretation of public laws * * * 'the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover.' *This rule is applied to taxing acts.*" (Italics supplied.)

Therefore the word "Claimant" should be given its ordinary meaning, referring to one who makes a claim or demand to recover what is due him, and does not refer to all taxpayers, who legally must file income tax returns, and who pay taxes, instead of demanding a return of taxes, when a return is filed.

PAYSOFF TINKOFF,
Plaintiff-Appellant, Pro Se.

IN THE

**United States Circuit Court of Appeals
For the Seventh Circuit**

No. 8962

October Term and Session, 1946

PAYSOFF TINKOFF,
Plaintiff-Appellant,

vs.

NIGEL D. CAMPBELL, Collector of
Internal Revenue, et al.,
Defendants-Appellees.

Appeal from the District Court of the United States for Northern District of Illinois, Eastern Division.

December 23, 1946

Before Sparks and Kerner, Circuit Judges, and Lindley, District Judge.

Sparks, Circuit Judge. Appellant is a disbarred attorney. Since his disbarment he has established offices in which he acts "*as a layman and accountant*, and *not* as an attorney, certified public accountant or public accountant, or as an attorney or agent licensed to practice before the Treasury Department." His business in part consists of advising taxpayers in filling out income tax returns. Ap-

petellee, as Collector of Internal Revenue for the First Collection District of Illinois, acting under the authority of Section 7(d) of Treasury Department Circular No. 230, published pursuant to 5 U. S. C. (1940 Ed.), section 261, has refused to permit him to represent taxpayers in explaining adjustments and computations in their returns or to accompany them upon interviews necessitated by such returns. Appellant contends that this action unduly restricts his constitutional rights of liberty, property and pursuit of happiness, and accordingly sued to enjoin the Collector from interfering with his rights to conduct his business as a layman, and for other relief.

We find no merit whatever in any of the contentions raised by Appellant and are fully in accord with the action of the District Court in dismissing the petition for injunction.

Judgment

Affirmed.

ACT OF JULY 7, 1884 (5 U. S. C. A. 261).

"That the Secretary of the Treasury may prescribe rules and regulations, governing the recognition of agents, attorneys and other persons representing *claimants* before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of *claimants*, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such *claimants* valuable service, and otherwise competent to advise and assist such *claimants* in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any *claimant* or prospective *claimant*, by word, circular, letter, or by advertisement." (Act of July 7, 1884, 23 Stat. 258; title 5, sec. 261, United States Code.)